

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
ACTING DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 14-123**

**JOSE LEMUS,  
Claimant-Petitioner,  
v.**

**GOLF COURSE SPECIALISTS and  
COMPANION PROPERTY & CASUALTY  
Employer/Carrier-Respondent.**

Appeal from a September 30, 2014 Compensation Order by  
Administrative Law Judge Nata K. Brown  
AHD No. 14-203, OWC No. 693506

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2015 MAR 3 PM 11 31

Carlos A. Espinosa for Claimant  
W. Tyler Mays for Employer<sup>1</sup>

Before LINDA F. JORY, HEATHER C. LESLIE, and JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

LINDA F. JORY for the Compensation Review Board.

**DECISION AND REMAND ORDER**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

Claimant worked for Employer as a groundskeeper at a golf course. On June 12, 2012, Claimant was working on the golf course when a branch fell from a tree and struck him on his head, right shoulder and right hand. Claimant came under the care of Dr. Harvey Mininberg for a fractured proximal phalanx right ring finger, lacerated right ring finger, cervical and lumbosacral strain as well as bilateral sacroiliac joint strain. Claimant was able to return to full duty in September 2012. On April 11, 2013, Dr. Fechter opined that claimant had reached maximum medical improvement with regard to the right hand and that he was entitled to a fifteen (15) percent impairment of the right hand as a result of the work injury. On October 9, 2013, Dr. Fechter recommended Claimant have an EMG nerve conduction study for further evaluation of Claimant's back.

<sup>1</sup> Cheryl D. Hale represented and appeared on behalf of the Employer at the Formal Hearing.

Employer did not authorize the EMG. A full evidentiary hearing occurred on May 22, 2014. Claimant sought an award of 15 percent permanent partial impairment pursuant to the schedule and authorization for an EMG of his lumbar spine. Administrative Law Judge (ALJ) Nata K. Brown issued a Compensation Order (CO) on September 30, 2014. The CO concluded Claimant's back problems were causally related to the work injury of June 12, 2012 and that Claimant had established he was entitled to a scheduled award of 15 percent permanent partial impairment of the right hand. The EMG was not found to be a reasonable and necessary medical expense.

Claimant timely appealed, asserting that the ALJ erred in disregarding the opinion of the treating physician, Dr. Fechter and crediting the opinion of IME physician, Dr. Louis Levitt. Employer opposes Claimant's appeal, asserting that the ALJ correctly discounted the opinion of Dr. Fechter as he did not explain why the EMG is necessary.

#### STANDARD OF REVIEW

The scope of review by the Compensation Review Board (CRB) and this Review Panel as established by the Act and as contained in the governing regulations is limited to making a determination as to whether the factual findings of the Compensation Order are based upon substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law. D.C. Code § 32-1521.01(d)(2)(A). "Substantial evidence", as defined by the District of Columbia Court of Appeals, is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int'l. v. DOES* 834 A.2d 882 (D.C. App. 2003). Consistent with this scope of review, the CRB and this panel are bound to uphold a Compensation Order that is supported by substantial evidence, even if there is also contained within the record under review substantial evidence to support a contrary conclusion, and even where the reviewing authority might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

#### ISSUE ON APPEAL

Is the September 30, 2014 Compensation Order supported by substantial evidence and in accordance with the law?

#### ANALYSIS

D.C. Code § 32-1507(b)(6) states in pertinent part "any medical care furnished . . . shall be subject to utilization review." In addition, when issues concerning the "necessity, character or sufficiency of medical care or service to an employee is improper or that medical care or service scheduled to be furnished must be clarified, the Mayor, employee or employer may initiate review by a utilization review . . . " *Id* at § 32-1507(b)(6)(B). It is now well settled that Utilization Review is the "exclusive and mandatory" procedure to resolve the reasonableness and necessity of medical care. *Chaupis v. George Washington University*, CRB No. 08-222, AHD No. 07-112A, OWC No. 622922 (November 26, 2008) citing *Gonzalez v. UNNICO*, CRB No. 07-005, AHD No. 06-155 (February 21, 2007). If Utilization Review procedures have not been exhausted, a formal hearing on the reasonableness and necessity of the requested medical care is premature. *Children's National Medical Center v. DOES*, 992 A.2d 403 (D.C. 2010).


In the instant matter, the ALJ indicated that "Employer did not provide a utilization review" and made no further mention of the now mandatory Utilization Review process and relied on the opinion of Employer's IME physician to reach her conclusion that an EMG was not reasonable or necessary. As the mandatory Utilization Review process was not undertaken prior to the issue presented for consideration at the formal hearing, the ALJ's conclusion that EMG is not reasonable and necessary reflects a faulty application of the law and must be vacated. *WMATA v. DOES*, 992 A.2d 1276 (D.C. 2010).

Employer has not appealed the ALJ's nature and extent analysis. We find the ALJ's conclusion that Claimant is entitled to 15 percent permanent partial impairment of the right hand is in accordance with the law, supported by substantial evidence, and accordingly is affirmed.

#### CONCLUSION AND ORDER

The ALJ's conclusion that the requested EMG is not reasonable and necessary is not in accordance with the law and is accordingly vacated. The matter is remanded to the Administrative Hearings Division to order Employer to submit the medical records to Utilization Review and complete the review process prior to presenting the issue at a formal hearing.

FOR THE COMPENSATION REVIEW BOARD:

  
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LINDA F. JORY  
*Administrative Appeals Judge*

March 3, 2015  
DATE